

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 30.04.2025

PRONOUNCED ON : 09.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.RC(MD)No.475 of 2025

and

Crl.MP(MD)No.4915 of 2025

C.J.Christopher Signi

: Petitioner

Vs.

State of Tamil Nadu, rep. by
The Inspector of Police,
Vigilance and Anti Corruption,
Kanyakumari District.

: Respondent

PRAYER: Revision filed under Section 442 of the Bharatiya Nagarik Suraksha Sanhita to call for the records relating to the impugned order passed in Crl.MP.No.4 of 2025, dated 01.02.2025, on the file of the Special Court / Chief Judicial Magistrate Court, Nagercoil and set aside the same.

For Petitioner : Mr.V.R.Shanmuganathan

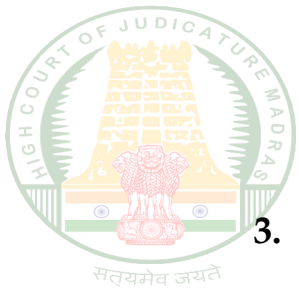
For Respondents: Mr.A.S.Abul Kalam Azad
Government Advocate (Crl. Side)

**ORDER**

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This Criminal Revision is directed against the order dated 01.02.2025 in Crl.M.P.No.4 of 2025, whereby the application filed by the petitioner/accused seeking forensic examination of certain audio and video recordings and for securing the voice sample of PW-2 (defacto complainant) was dismissed by the learned Special Judge / Chief Judicial Magistrate, Nagercoil.

2. The petitioner, who served as the Electrical Inspector, Tirunelveli District, is facing trial under Section 7(a) of the Prevention of Corruption Act, 1988. It is alleged that the petitioner demanded and accepted illegal gratification of Rs.8,000/- from PW-2, an Electrical Contractor, for issuing a safety certificate for a 20 KVA generator. The petitioner was arrested on 23.11.2018 pursuant to a trap laid by the Vigilance and Anti-Corruption Wing. The trial is presently at the stage of examination of defence witnesses.



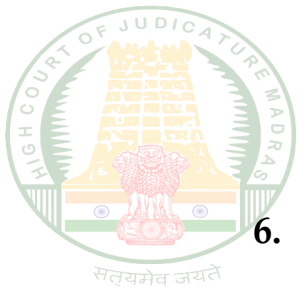
3. Learned Counsel for the petitioner submitted that Ex-D6, a pen drive marked during defence evidence, contains three voice recordings of conversations between the petitioner and PW-2, including a crucial one on the date of the trap. According to the petitioner, the tone and context of the conversations negate the prosecution's narrative and support the defence version. It was submitted that the veracity and integrity of these recordings need to be verified through scientific examination by an expert under Section 45A of the Indian Evidence Act, for which the voice sample of PW-2 is essential.

4. Additionally, the petitioner relied on a video recording, allegedly capturing a conversation between the wife of LW-7 and the petitioner, wherein reference is made to the removal of CCTV footage by the investigating agency. The petitioner asserted that this recording is directly relevant to the defence plea of suppression of crucial evidence by the prosecution. It was argued that the trial Court erred in summarily dismissing the application by relying solely on the cross-examination of



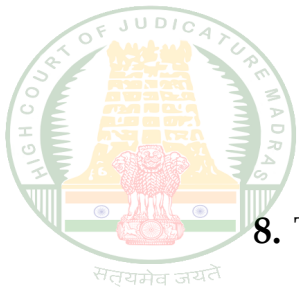
DW-1, who had merely stated that the recordings were transferred from the petitioner's phone and that alteration using mobile software was theoretically possible. The mere possibility of tampering cannot displace the need for an expert's opinion, which is precisely meant to determine such questions. The denial of such an opportunity undermines the petitioner's right to present an effective defence and runs counter to the principles of fair trial. Therefore, he prayed for appropriate orders.

5. Per contra, the learned Government Advocate (Crl. Side) submitted that the application was misconceived and intended only to protract the proceedings. It was pointed out that the video recording relied upon by the petitioner was allegedly created four years after the incident and the persons shown therein were not examined as witnesses during the trial. It was further argued that the alleged CCTV footage never formed part of the prosecution case and its supposed removal was a false narrative developed by the petitioner belatedly, in the absence of any protest or complaint.



6. As regards Ex-D6, the learned Government Advocate drew attention to the deposition of DW-1, who admitted in cross-examination that the contents of the pen drive were downloaded from a mobile phone and that editing using available mobile applications was feasible. On this basis, it was contended that the recordings lacked reliability and authenticity. He further submitted that the voice sample of PW-2, who is not an accused but a witness, cannot be compelled without infringing upon his personal liberty and right to privacy. It was asserted that compelling such a sample from a private citizen would open the floodgates to misuse and overreach, particularly in corruption cases where traps are conducted in a lawful manner. According to him, the trial court had exercised its discretion judiciously and that no case for interference under the revisional jurisdiction had been made out. Therefore, he prayed for dismissal.

7. This Court considered the rival submissions made on either side and perused the materials placed on record.



8. The impugned order of the trial Court reveals that the application was dismissed on three principal grounds:

- (a) the video recording was made four years after registration of the FIR;
- (b) the persons appearing in the recording were not examined; and
- (c) the possibility of tampering, as suggested by DW-1, rendered the recordings suspect.

9. This Court is unable to accept the reasoning of the trial Court in its entirety. The fact that the video was recorded at a later point in time does not, by itself, render it inadmissible or irrelevant. The conversation captured therein, if authentic, may lend credence to the allegation of suppression of CCTV footage, which is a matter with potential bearing on the integrity of the trap proceedings.

10. As regards the voice recordings in Ex-D6, their proximity to the alleged incident, including a conversation on the very day of the trap,



makes them intrinsically relevant. Whether these recordings support or rebut the allegations is a matter for trial, but they cannot be excluded from scientific scrutiny merely on speculative grounds.

11. The apprehension that the contents may have been altered is not a justification for refusing forensic examination. On the contrary, such concerns reinforce the need for expert analysis. A determination as to whether the files were edited or manipulated can only be reached by a competent forensic authority, not through assumptions or oral statements by lay witnesses.

12. With regard to the power to order a person to give voice samples, this Court takes note of the position laid down by the Hon'ble Supreme Court in *Ritesh Sinha v. State of Uttar Pradesh* [(2019) AIR SC 3592], wherein it was held as under:-

"27. ... we unhesitatingly take the view that until explicit provisions are engrafted in the CrPC by Parliament, a Judicial



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Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in this court under Article 142 of the Indian Constitution."

13. The recently enacted Section 349 of the Bharatiya Nagarik Suraksha Sanhita echoes this statutory recognition and the same is extracted as under:-

"349. If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:

Provided further that the Magistrate may, for the reasons to be



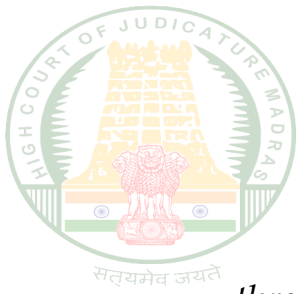
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recorded in writing, order any person to give such specimen or sample without him being arrested."

14. On the issue of whether a judicial order compelling voice samples would be violative of the fundamental right to privacy under Article 20(3) of the Constitution, the Hon'ble Supreme court in *Ritesh Sinha*'s case (supra) answered the same in the negative and observed as follows:-

"26. ... The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others, Gobind vs. State of Madhya Pradesh and another and the Nine Judge's Bench of this Court in K.S. Puttaswamy and another vs. Union of India and others the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest."

15. In *Gobind v. State of Madhya Pradesh and Another* [AIR 1975 SC 1378], the Hon'ble Supreme Court held that the Right to Privacy was not absolute in nature. The relevant portion is extracted as under:-



“28. The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute.”

16. In Re Justice K.S.Puttaswamy (Retd.), and Another v. Union of India and Others [2017 (10) SCC 1], the Hon'ble Supreme Court has held that right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution of India. However, this right is not an absolute right. The relevant observations are as follows:-

“325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal



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liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of

- (i) legality, which postulates the existence of law;*
- (ii) need, defined in terms of a legitimate State aim; and*
- (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.*

326. Privacy has both positive and negative content. The negative content restrains the State from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the State to take all necessary measures to protect the privacy of the individual."

17. From the above precedents, it is clear that the Right to privacy, like all fundamental rights, can be reasonably curtailed when there is a larger public interest involved.

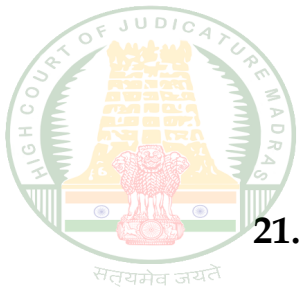
18. Thus, the refusal to call for the voice sample of PW-2, when it is the only means to conduct a scientific comparison, cannot be justified merely on the plea of privacy, especially when the sample is sought under



judicial supervision and for the limited purpose of expert analysis in a pending trial.

19. The petitioner, like any accused, is entitled to a fair opportunity to disprove the allegations against him. Denial of access to forensic comparison in the face of specific electronic material forming part of defence evidence amounts to curtailment of such a right.

20. For the foregoing reasons, this Court finds that the order passed by the learned Chief Judicial Magistrate-cum-Special Judge suffers from non-application of mind to the legal principles governing expert evidence and fair trial, and accordingly warrants interference. Accordingly, the Criminal Revision Petition is allowed and the order dated 01.02.2025 passed in Crl.M.P.No.4 of 2025 in Special Case No.2 of 2020 is set aside.



21. The learned Trial Judge is directed to:

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- Permit the forensic examination of Ex-D6 (pen drive) and the video recording by a competent Government Forensic Laboratory, by fixing an outer time limit;

- Take necessary steps to secure the voice sample of PW-2, under due process, for the limited purpose of expert comparison;

- Proceed with the trial expeditiously, since it is of the year 2020, in accordance with law.

Consequently, connected miscellaneous petition is closed.

Internet : Yes
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To

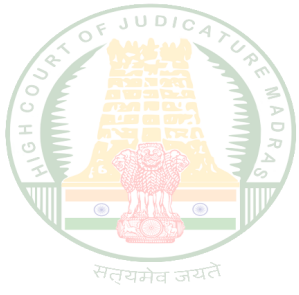
1.The Inspector of Police,
Vigilance and Anti Corruption,
Kanyakumari District.

2.The Chief Judicial Magistrate,
Nagercoil.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VERDICTUM.IN



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B.PUGALENDHI, J.

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